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22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
24 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.,
25 Plaintiff,
26 v.
27 GOOGLE INC.,
28 Defendant.

Case No. CV 10-03561 WHA

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL PORTIONS OF
ORACLE'S MOTION IN LIMINE # 6
RE: RULE 706 EXPERT, PROFESSOR
JAMES KEARL**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 Plaintiff Oracle America, Inc. (“Oracle”) hereby moves to file portions of Oracle’s Motion
 2 *In Limine* # 6 Regarding Rule 706 Expert, Professor James Kearl under seal pursuant to Civil
 3 Local Rules 7-11 and 79-5.

4 The Order Approving Stipulated Protective Order Subject to Stated Conditions entered in
 5 this case, ECF No. 68, states that when material has been designated as “CONFIDENTIAL” or
 6 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY,” a party may not file it in the
 7 public record, but must seek to file it under seal pursuant to Civil Local Rule 79-5. Stipulated
 8 Protective Order § 14.4, ECF No. 66.

9 Google Inc. (“Google”) has designated certain materials contained in, quoted from, and
 10 discussed in Oracle’s Motion *In Limine* #6 and the Exhibits cited therein as “CONFIDENTIAL”
 11 and “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” pursuant to the Protective
 12 Order. Solely in order to comply with the technical requirements of the existing Protective Order,
 13 Oracle offers redacted public versions of its Motion and supporting documents that contain or
 14 discuss Google-designated materials pursuant to the Protective Order. Oracle submits the
 15 following materials under seal in whole or in part on account of Google’s Protective Order
 16 designations:

- 17 • The following portions of Oracle’s Motion *In Limine* #6:
 - 18 ○ Page 1, line 5: the dollar amount at the end of the sentence
 - 19 ○ Page 1, line 7: the dollar amount after the word “number”
 - 20 ○ Page 1, lines 17-21: the dollar amounts in each bulleted paragraph
 - 21 ○ Page 1, line 25: the dollar amounts within the parentheses
 - 22 ○ Page 1, footnotes 1 and 2: all dollar amounts state in both footnotes
 - 23 ○ Page 2, line 6: the dollar amount after the word “Kearl’s”
 - 24 ○ Page 3, lines 3-5: text after the word “that” on line 3 and before the first
 - 25 period on line 5
 - 26 ○ Page 3, lines 6-7: text after the word “that” online 6 and before the word
 - 27 “that” on line 7
 - 28 ○ Page 3, lines 11-14: text after the word “that” on line 11 and before “see

also” on line 14

- Page 4, lines 8-24: all dollar amounts
- Page 5, lines 1-10: all dollar amounts
- The entirety of Exhibit 2 to the Declaration of Andrew D. Silverman, excerpts from the March 23, 2016 deposition of Professor Kearl,
- The following portions of Exhibit 3 to the Declaration of Andrew D. Silverman, excerpts from the March 28, 2016 Supplemental Report of Dr. Jaffe:
 - Page 10, footnote text
 - Page 11, paragraph 23, all text after the first appearance of the word “Kearl”
 - Page 14, footnote 32
 - Page 15, the last six words of paragraph 29
 - Pages 15-16, paragraph 31, all text before the word “Thus” on page 16
 - Page 17, footnote 39, all text before the first appearance of the phrase “*see also*”

Oracle does not believe the Google-designated information discussed in these documents should be sealed and Oracle affirmatively requests that no material older than two years be subject to any further request to seal, as suggested at the recent tutorial.

Both parties have designated material in Dr. Kearl’s March 18, 2016 Report, Exhibit 1 to the Declaration of Andrew D. Silverman, as “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY.” Consistent with the Court’s guidance, Oracle moves for a very limited, narrow sealing order permitting Oracle to file under seal confidential revenue and expense data from 2014 and 2015 that is discussed in Dr. Kearl’s March 18, 2016 Report. Oracle seeks to seal only the following portions of Dr. Kearl’s Report:

- Page 47: the 2015 revenue numbers stated in the last two sentences of paragraph 92 of Dr. Kearl’s Report
- The 2014 and 2015 financial information contained in Exhibit 6 to Dr. Kearl’s Report

Oracle's requested order is narrowly tailored to reach only specific revenue and profit figures that are two-years old or less. As set forth in the Declaration of Andrew Temkin, the limited information Oracle seeks to seal is competitively sensitive information that Oracle maintains in confidence. Oracle respectfully submits that the risk of competitive injury to Oracle constitutes a compelling reason to grant Oracle the narrowly tailored relief requested. *See, e.g., Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1181 (9th Cir. 2006) (setting standard); *Finjan, Inc. v. Proofpoint, Inc.*, 2016 U.S. Dist. LEXIS 15825, at *5 (N.D. Cal. Feb. 9, 2016) (granting motion to seal confidential revenue data) (citing *inter alia Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (holding access to court records has been denied when it includes "sources of business information that might harm a litigant's competitive standing.")).

Google has designated a significant amount of information discussed in Dr. Kearl's Report under the Protective Order, including hypothetical analyses by Google's damages expert Dr. Leonard that are discussed in Dr. Kearl's Report. *See, e.g.*, ECF No. 1580 at ¶ 2 (Google declaration seeking to seal, *inter alia*, Dr. Leonard's hypothetical cost savings calculations).¹ Oracle objects to Google's designations but files Dr. Kearl's report under seal in an abundance of caution in order to provide Google the opportunity to seek relief under L.R. 79-5. Oracle has provided, under seal, a proposed public version of Dr. Kearl's Report with only Oracle's confidential information redacted. Should Google obtain relief pursuant to L.R. 79-5, and to the extent that Oracle's present motion to seal is granted, Oracle respectfully requests that the parties be given the opportunity to prepare and file a single public version of Dr. Kearl's Report that redacts both parties' designated information.

¹ Google has also designated the entirety of Dr. Kearl's deposition transcript as HIGHLY CONFIDENTIAL—ATTORNEYS EYES ONLY.

1 Dated: March 30, 2016

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